



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

October 9, 1990
AO-90-32

Daniel B. Winslow, Esquire
Sherin and Lodgen
100 Summer Street
Boston, MA 02110

Dear Mr. Winslow:

This letter is in response to your request for an advisory opinion.

You have stated that your firm represents a corporate subsidiary of a Delaware corporation, with its principal place of business outside the Commonwealth of Massachusetts (the "Company"). You have asked for an advisory opinion based on the following facts:

Individuals employed by the Company are asked from time to time by public leaders, clients, potential clients, and business acquaintances to make contributions to candidates for state and local elective office in the Commonwealth. Because of the size and volume of requests in Massachusetts and other states, it is very difficult for an individual to respond favorably in each case where he believes it is in his professional interest to do so. To address this concern, the Company wishes to establish an informal network of employees to facilitate the making of such contributions and to share the burden they represent.

Under the proposed arrangement, 300 to 500 of the most highly compensated employees of the Company and its affiliates would be informed that they may be asked in the future to make a contribution to candidates in various states, including Massachusetts, in an amount up to .5% of their total annual cash compensation. The number of employees actually contributing in Massachusetts pursuant to this proposal would in all likelihood be a small fraction of the above-described population. While these figures may change over time, the contribution network always would be limited to highly compensated employees, and the requested contribution always would be less than 1% of their total cash compensation. An employee who makes a contribution will not be reimbursed for the amount contributed.

When a contribution request thereafter is received by an employee, he would forward it to an individual acting as a coordinator. The coordinator would in turn send the request to the administrative manager responsible for one of the business units which employs individuals eligible to be solicited as described above. The administrative manager receiving the request would then ask one of such employees to make the requested contribution or part of such contribution. If the employee declines to make the contribution, the manager would repeat the request to the next eligible employee on the list, continuing until the contribution was agreed to or until the list was exhausted. In the latter event, the coordinator would turn to the administrative manager of another business unit who would repeat the process. Contributions would be paid by personal check by the employee who actually made the contribution.

Once the contribution is made, the check would be forwarded to the coordinator, who would hand it to the employee who was originally solicited, for delivery to the solicitor. Although you have described the foregoing process as applicable to political contributions, it would also apply to any request for donations or charitable contributions made to Company employees.

You have inquired as to the propriety of the activities described above under the provisions of M.G.L. c.55.

Section 8 of M.G.L. c.55 states, in pertinent part:

No corporation carrying on the business of a bank, trust, surety indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat power, canal, aqueduct, or water company, no company having the right to take land by eminent domain to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office . . .

The Attorney General, in an opinion dated November 6, 1980, has observed that "corporate officers, including a corporation's chief executive officer, are free to endorse any candidate they choose, to discuss that candidacy during the normal course of conducting corporate business, and to solicit support, financial or otherwise, for the candidates of their choice . . . Even as the statute does not restrict the

independent political activities of corporate officers, stockholders and employees, so also does it fail to provide them any insulation from solicitations by their peers."

It is therefore the opinion of this office that while individual employees of the Company may solicit contributions for candidates, the campaign finance law would prohibit the corporate referral system you have described from being implemented because corporate resources are utilized in administering such a system. In that situation, we would offer the following additional cautions:

The Attorney General, in his November 6, 1980 opinion, stated:

You have asked whether a corporation may allow a candidate or political committee to use its internal mail system or to implement a payroll deduction plan for employee contributions. This type of corporate involvement is contemplated by the federal statute . . . Massachusetts law contains no similar exemption from the general ban on corporate contributions and expenditures. Accordingly, corporations may not provide internal mail or payroll deduction systems to candidates or political committees without receiving appropriate compensation in return.

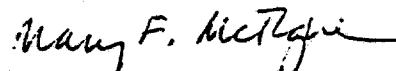
It is the opinion of this office, that by dedicating personnel (e.g., a "coordinator" and "administrative managers") as well as Company resources, i.e., telephones, computers, copiers and the like, to a system for routing solicitations for political contributions, the Company would be indirectly expending money to support each candidate whose solicitation was so routed. These indirect expenditures would be prohibited pursuant to section 8 of M.G.L. c.55.

We would also alert you to the provisions of section 16A of M.G.L. c.55 which relieve persons doing business with the commonwealth of any obligation to contribute to any political fund or to render any political service.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue
Director

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